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IN THE

Supreme Court of the United States

OCTOBER TERM [redacted] 1970

No. [redacted] 258

NEVA M. SHANKLIN, etc.,
Petitioner

v.

AMERICAN NATIONAL TRUST and
REPUBLIC NATIONAL TRUST,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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AMERICAN NATIONAL TRUST and
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I

The Petitioner prays that a Writ of Certiorari issue to review the Judgment and final Order of the Court of Appeals for the Seventh Circuit in the above entitled proceeding, as rendered and entered January 14, 1970.

II

CITATIONS TO OPINIONS BELOW

At this time counsel is unaware of any publications of any Decisions or Orders in the Courts below. The Judgment and Opinion of the Seventh Circuit of January 14,

1970, in the above entitled proceeding are published in the Appendix hereto. (Appendix A-1, A-5.)

In the District Court below, the Order of April 26, 1968, approving the *claimed Petitions* is published in the Appendix hereto. (R65, Appendix A-9)

In the District Court below, the Order granting the Trustees Motion to Strike Shanklin's Petition to vacate and set aside the Order approving Petitions entered April 26, 1968, appears at R 107, and is published in Appendix A-11 hereto.

In the District Court below, the Entry dated March 14, 1969, dismissing the Appeal of Neva M. Shanklin to the Seventh Circuit Court of Appeals appears at R 134, and is published in Appendix A-12 hereto.

III

JURISDICTION

The statutory provisions believed to confer on this Court Jurisdiction to review the Judgment or Decree in question by Writ of Certiorari is Title 11, United States Code, Section 47(c), and Title 28, United States Code, Section 1254 (1), and paragraph 24 of the Bankruptcy Act.

On consideration of the Application of counsel for the Petitioner, Mr. Justice Marshall, on April 3, 1970, signed an Order extending time within which to file a Petition for Writ of Certiorari in the above entitled case to and including June 13, 1970.

IV

QUESTIONS PRESENTED

1. Whether under the Constitution and laws of the United States, after approval by a United States District Court of a purported "Petition" for Reorganization of a commonlaw Trust in Bankruptcy proceedings, continued objections to Jurisdiction of the District Court are timely in a United States Court of Appeals, when Appeal is perfected timely to the Court of Appeals from an Order entered upon the journal of the District Court determining or

disposing for the first time of objections to said Jurisdiction made before and continued after approval of said purported "Petition".

2. Whether under the Constitution and laws of the United States requisite Jurisdictional facts sufficient to confer conclusive Jurisdiction on a United States District Court in Bankruptcy proceedings are established at a hearing on a purported "Petition" for Reorganization of a common law business Trust, on evidence manifest that whatever claims the persons filing the purported "Petitions" might have had against the Trust were not liquidated as to amount and were not contingent as to liability but arose solely by virtue of claimed sales inducing misrepresentations of optional redemption, purportedly made to one of Petitioners by a brokerage salesman over a period of time during which he purchased shares of beneficial interest in said Trust.

3. Whether a document labeled "Petition" which on its face does not conform to the statutory requirement of a "Petition" in that the sole claim of each of the three petitioners to the status of "Creditor" derives from their claim of ownership of beneficial interests of a business trust, presents to the Court a proper "Petition" under the Act so as to confer requisite Jurisdiction of the subject matter, and personal Jurisdiction to order "approval of a Petition" under Chapter X proceedings.

4. Whether a document naked of the elements of a requisite "Petition" as defined by the Act, can ripen into an Order which can become "final, approving a Petition filed under this Chapter" (X), and can ripen as a matter of law into "a conclusive determination of the Jurisdiction of the Court" so as to bar a continued consistent attack on void, non extant, claimed Jurisdiction, raised prior and subsequent to claimed approval of a void or non extant "Petition", including bad faith.

5. Whether failure of each of 3 claimed Petitioners in all, to present evidence at a hearing on the "Petition for Reor-

ganization" from which it might be found that each has a valid claim provable in Bankruptcy which when added to the remaining two claims provable in Bankruptcy will aggregate $5,000 or over; liquidated as to amount and not contingent as to liability, bars the District Court of whatever Jurisdiction it might have eventually acquired to proceed with Reorganization of a claimed debtor Trust under proper allegations and proof.

V

CONSTITUTIONAL PROVISIONS AND LAWS INVOLVED

Constitution of the United States, Amendment 5:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Bankruptcy Act,	(Cross-referenced to U. S. Code:)	
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144	11 USC #544	(App 18)

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VI

STATEMENT OF THE CASE

Petitioner herein, NEVA M. SHANKLIN, a widow of 78, is the owner of shares of beneficial interest in both the American National Trust and Republic National Trust, two common law Indiana business Trusts having invested therein the sum of Thirty Thousand Six Hundred ($30,600.00) Dollars. (R 58)

For herself and all others similarly situated, who number in the thousands, Petitioner Shanklin challenged the jurisdiction of the United states District Court for the Southern District of Indiana, Indianapolis Division, by Verified Motion on April 4, 1968, in writing, in conformity with Section 137 and 206 of the Act and by verified Petition on December 23, 1968, in writing, with Exhibits, as filed with the Clerk of said Court. (R 57-60, R 86-90, [illegible])

The District Court of first instance did not inquire into its own Jurisdiction upon said challenges and did not dispose of the same by Entry in its journal, except to dismiss the Petition filed December 23, 1968, from which action Appeal was timely perfected to the United States Court of Appeals for the Seventh Circuit, notwithstanding the District Court unlawfully attempted to dismiss the Appeal to the Seventh Circuit United States Court of Appeals by Entry March 14, 1969. (R 134, App 12).

There was and is no basis for federal Jurisdiction in the District Court of first instance in this case.

These cases were initiated by patently void documents labeled "Petitions" filed in the District Court, by two (2) sets of three (3) each dissident shareholders alleging with manifest falsehood that a Creditor-Debtor relationship in requisite Jurisdictional and unliquidated amounts existed between the dissident shareholders filing the documents

and two (2) Indiana business Trusts, the American National Trust and the Republic National Trust. (R 29-37, R 38-46).

In the documents labeled "Petitions" filed on February 13, 1968, Petitioners' allegations as Creditors of American National Trust and the claims against it or its property in nature and amount are set forth with absolute specificity: (A) $3,560.00 or 356 shares of beneficial interest, (B) $2,000.00 or 200 shares of beneficial interest, (C) $7,410.00 or 741 shares of beneficial interest (R 32-33); (App 6-7) nothing more, even though said shares had no fixed or unliquidated value.

In the documents labeled "Petitions" filed on February 26, 1968, the Petitioners' allegations as Creditors of the Republic National Trust and the claims against it and its property in nature and amount are set forth with absolute specificity: (A) $2,130.00 or 213 shares of beneficial interest, (B) $2,130.00 or 213 shares of beneficial interest; (C) $2,000.00 or 200 shares of beneficial interest (R 41-42, App 7-8); nothing more, even though said shares had no fixed or unliquidated value.

By Order dated March 7, 1968, (R 49-54), as entered in its Bankruptcy Docket, (R 23-24), the District Court Ordered that John Bradshaw, Jr. be and is appointed as Receiver to take charge of the property of the American National Trust and Republic National Trust, and to conduct the business, operate and manage said Trusts; "and said Receiver be, and he hereby is authorized and empowered to conduct the business of said debtors until the approval or dismissal of the Petitions against the said debtors filed herein, providing that proceedings be had on Chapter X of the Act of Congress relating to Bankruptcy, or the further Order of this Court; and it is further Ordered . . . ." (R 50)

The trustees of the Trust did not challenge the Jurisdiction of the District Court, refused to defend, and proposed to confess Judgment, all in bad faith, which the District Court did not hear to date, irrespective of their Amended Answers which deny that Petitioners are Creditors.

On April 4, 1968, Petitioner Shanklin, etc. filed a Motion to intervene in the actions filed by Petitioners, showing the District Court she is the owner of Certificates of beneficial interests in both the alleged Debtors in the sum of $30,600.00; and stating other matters showing her interest in the actions; and to show the Court that the Petitioners in the District Court and all of them are without standing under the law of the United States by which said Petitioners claim a right to institute these proceedings and consequently, the Court is without Jurisdiction to proceed herein except to dismiss the Petition and dissolve all Orders heretofore made by virtue of the asserted Jurisdiction claimed in the Petitions (R 57-58).

Also on April 4, 1968, Petitioner Shanklin, etc. filed her verified Motion to Dismiss the Petitions and vacate the Order appointing a Receiver and the Order adjudicating American National Trust and Republic National Trust, Bankrupts, answering and alleging in part:

> "The Court is without Jurisdiction to proceed in the subject matter in that the Petitioners are not Creditors of American National Trust and Republic National Trust or either of them; the Petitioners have not properly exercised their administrative remedies under the Trust indenture instrument under which said Trusts were organized; said Petitioners do not represent the class known as the holders of all of the beneficial interests in said Trusts; the interests of all of the holders of Certificates of beneficial interests in said Trusts is being diluted and diminished and jeopardized by these proceedings without right and contrary to law without compensation therefor and in violation of the constitutional rights of said Certificate holders and in particular, Neva M. Shanklin. (R 59-60)"

In support of the Motion to Dismiss, it was shown to the Court by Memorandum of Law that the Petitioners allege that they are Creditors solely by virtue of their ownership of beneficial interest in the subject Trusts (reference para-

graph 10 of both original Petitions), App 6, 8. (R 60.1). The Court's attention was called to the matter that the Supreme Court of the United States has found unequivocally that the shareholders of a business Trust in the meaning of the Bankruptcy Act are not Creditors (R 60.1) and a number of Federal Circuit Court cases, and other authority which concur in the conclusion of the applicant were also cited. (R 60.1-60.3).

On April 26, 1968, two of the three debtor corporations' trustees in bad faith filed Motions for leave to file an Amended Answer, with Amended Answers included, which Amended Answers consent and acquiesce in the granting of the void "Petitions" for Reorganization after a fraud in-factum Vote of consent by the said two trustees of the debtor corporations on April 24, 1968, (R 61-64) (R 89, and Exhibits 2, 3, 4 attached thereto) denying, however, that Petitioners are Creditors.

Only one alleged Petitioner, Mr. Bezi, was presented to establish by his testimony that he was a Creditor of American National Trust. No one was presented to establish by testimony that he was a Creditor of Republic National Trust.

Mr. Bezi testified (On April 26, 1968) (TR 14) that he owns 565 shares *purchased over a period of years* and has invested in excess of $5,000.00 (TR 15) and was told by salesmen "they didn't guarantee" 8% or more and represented orally that the shares could be cashed at any time. This falls far short of establishing proof of a "claim" by a "shareholder" as a "Creditor".

Mr. O'Bryan, a State of Indiana Deputy Securities Commissioner testified to numerous complaints, but that in April 1967 (TR 23) "at any time the trusts complied with the interrogatories, that the suspension would be lifted."

On April 26, 1968, the District Court Ordered, Adjudged and Decreed that said "Petitions" be, and they hereby are approved. (R 65-66)

Notwithstanding the recitation of the first paragraph of the January 14, 1970 Decision, the subject of this Appeal, there has never been a hearing upon notice to anyone for a determination of issues raised by Petitioner Shanklin as required by Section 144 Act prior to approving void Petitions, and thus no final determination conclusive thereof under Section 145 Act (TR 38); nor has the Court ever journalized any findings, never having made any till December 30, 1968, (R 107) App 11.. It could not become final under Section 149 Act because Petitioners' lack of capacity, lack of good faith, and lack of Jurisdictional amounts in unliquidated form, appear on the face of the void Petition (R 32-33 [ANT]), App 6-7 (R 41-42 [RNT]). App 7-8.

Proof that this hearing of April 26, 1968 was conducted ex parte as to Petitioner Shanklin is the fact that the three (3) witnesses who testified were excused by the Court without their being submitted for cross-examination on her verified Motion (TR 9, 16, 26), nor were there any findings on the issues raised by her Motion, nor were findings ever journalized.

On October 21, 1968, Neva M. Shanklin, etc., petitioned for a declaratory judgment in the Circuit Court of Howard County, Indiana being Case #37528 therein (R 78-79) declaring the acts of the trustees of American National Trust and Republic National Trust void for bad faith in acquiescing and consenting to continuance of proceedings for reorganization in each cause in the District Court, and prayed for other proper relief, to exemplify she had been denied due process in the District Court, and that it did not have the Jurisdiction it was asserting.

On November 6, 1968, the District Court ex parte entered and Ordered that the cause in the Circuit Court of Howard County, as above be and it hereby is stayed and that no further proceedings be had thereon until further Order of this Court. (R 83)

Notice of Appeal from the Order of November 6, 1968, to the United States Court of Appeals for the Seventh Cir-

cuit was filed in the District Court, by Appellants herein, on December 5, 1968. (R 85)

On December 16th Appellant secured an Order effective to December 23, 1968, to file in writing Objections to Jurisdiction.

On December 23, 1968, Appellants herein filed in the proceedings in the District Court a Petition to vacate and set aside the Order approving Petitions entered April 26, 1968; to dismiss proceedings, and for other equitable relief. (R 86-99).

On December 30, 1968, on Appellee's Motion the District Court entered an Order striking in toto Appellant's Petition to vacate and set aside Order approving Petitions entered April 26, 1968; to dismiss proceedings, and other equitable relief (R 107-108) again without any hearing as required by Section 144 Act;

And, entered an Order on Petition for Allowances of Fees aggregating $87,495.50 and Expenses of $1,722.71 for a total of $89,218.21 (R 109-114).

On January 27, 1969, Appellant filed Notice of Appeal from both said Orders of December 30, 1968, to the United States Court of Appeals for the Seventh Circuit (R 115).

On March 6, 1969, Appellant filed a Statement of Points upon which she intends to rely on that Appeal. (R 123-124)

On March 14, 1969, the District Court made and entered an Order denying Appellant's Motion to Extend Time for filing the Record and docketing Appeal in the Court of Appeals; and Ordered that said Appeal be dismissed. (R 134-135)

On April 14, 1969, Appellant filed Notice of Appeal to the United States Court of Appeals for the Seventh Circuit from the said Orders of March 14, 1969. (R 136)

On April 24, 1969, Appellant filed a Statement of Points upon which she intends to rely on that Appeal Specifically

incorporating the Statement of Points heretofore filed on March 6, 1969, (R 147-148) pointing out additionally that the District Court was not authorized to dismiss the Appeal.

On May 22, 1969, the United States Court of Appeals for the Seventh Circuit, being fully advised in the premises, Ordered that leave be and the same was granted to docket all Appeals in that Court instanter, and were assigned numbers 17641, 17642, and 17643; and,

On June 18, 1969, Ordered a printed Appendix dispensed with and compliance with Rule 30(f) in certain particulars.

On January 14, 1970, the Seventh Circuit Court of Appeals Ordered and Adjudged that Orders of the District Court approving the Petitions for Reorganization under Chapter X, denying the Motions to Vacate and Stay the collateral attack on debtor's consent to Reorganization, be, and the same were AFFIRMED (App. 1).

VII

REASONS FOR ALLOWANCE OF THE WRIT

Jurisdiction of this Court is invoked on grounds that the United States Court of Appeals for the Seventh Circuit, which affirmed the Orders of the District Court approving documents labeled "Petitions" and other actions of the District Court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the District Court, as to call for an exercise of this Court's power of supervision.

The substance of the Questions presented for review involve federally guaranteed fundamental rights of persons not to be deprived of property, without due process of law, including the proposition that until Appeals are finally determined, the question of Jurisdiction is very much alive. Almost 10,000 persons from Indiana who have invested fifteen (15) to twenty (20) million dollars are involved.

Unjustifiably loose application of clear statutory definitions in Chapter X proceedings facilitates remarkable error,

and abuse of discretion. Although basically, a Plan for Reorganization should be relatively simple, no Plan for reorganization to the writer's knowledge has yet been devised nor recommended by Mr. Bradshaw who has been Trustee in excess of two (2) years, and Receiver prior thereto, nor by his appointees, while the shareholders' property is being diminished without due process of law.

This Court has in recent years undertaken to furnish some of the light we need. Despite its severe limitations of time, the issues raised herein, coupled with the need for supervision, warrant its consideration.

If the claimed want of Jurisdiction is not dispositive, Petitioner Shanklin still had a timely right to attack "good faith".

It is shown to the Court that Petitioner Shanklin's Petition continuing objection to the Jurisdiction of the District Court, alleging standing and related matters, and a Brief in support thereof, was filed in the District Court (R 86-99), and that the District Court did strike this Petition in toto, partially on the grounds that said "Petition is without standing . . . and redundant and immaterial . . . and the issues raised have been previously determined by this Court without objection or Appeal having been timely filed." (R 108). The record does not support this recitation; and none of the issues raised had been previously docketed, assigned for hearing, heard and determined, nor journalized by the District Court.

Petitioner Shanklin submits as an important question of federal law involved, which has not been but should be settled by this Court, that the District Court's denial of standing to a Petition to dispute allegations, to allege lack of "good faith", to allege fraud on the Court, to allege substantial irregularities, to allege there is no true need for relief, to allege other matters of defense on behalf of a corporation, where the party petitioner is a holder of shares of beneficial interest in the corporation, jeopardized by proceedings in the District Court, and the trustees charged with

the protection of corporate property are adversely interested, and not only refuse to defend but propose to confess Judgment, in Bankruptcy proceedings as in this case, constitutes a denial of due process of law, and an arbitrary abuse of discretion prejudicial to substantial rights, and as such is not to be tolerated in a justiciable democratic society.

The District Court has no Jurisdiction in these causes.

In support of Petitioner Shanklin's contentions herein, it is shown to the Court that the "Petitions" allege the subscribers are Creditors solely by virtue of their ownership of beneficial interest in the subject trusts (R32-38 [ANT]), App 6-7 (R 41-42 [RNT]). App 7-8.

The Supreme Court of the United States has passed upon this matter and has found unequivocally that the shareholders of a business trust in the meaning of the Bankruptcy Act are not Creditors. *Bryan vs. Welsh* (1934; CCA 10th); 72 F2d 618, 26 Am Bankr Rep (NS) 545; (later appealed in 1935; CCA 10th 74 F2d 964, 27 Am Bankr Rep (NS) 602; Writ of Certiorari denied in 1935 295 U. S. 745, 79 L ed 1693, 55 S Ct 826 with lengthy annotation and great dissertation in 156 ALR 22 at page 99 and 217. It is clearly established that "shareholders are not creditors of the trust within the meaning of the Bankruptcy Act".

The Court's attention is called to a number of Federal Circuit Court cases which concur in the conclusion of Petitioner Shanklin. The cases are *Selected Investments Corporation vs Duncan*, 26 F2d 918 (10th CIR 1958); *In Re Cook*, 101 F2d 394 (7th CIR 1939); *In Re Cook*, 104 F2d 981 (7th CIR); *Goodhue vs. State Street Trust Co.*, 165 N.E. 701 (MASS-1929) which case was cited as relevant and in point in the *Bryan vs. Welsh* case, 72 F2d 618.

The 7th Circuit Court in the case of *Wertime, Inv. vs. Turchick*, 358 F2d 811 (1966) said that the interest of shareholders is equity and may be eliminated entirely in a Bankruptcy proceeding so that the assets of the corporation may be used for payment of Creditors. The Court indicated

that if the Creditors are paid leaving nothing for shareholders, the shareholders then must not, consequently, be Creditors.

It is evident from the examination of the ALR annotation (156 ALR 22) with the form trust indenture that considerable of the language in that form and the very trust instruments for American National Trust and Republic National Trust is identical. Some of the wording can be found in the Supreme Court case *Hemphill vs Orloff* (1928) 77 U.S. 537, 72 L ed 978, 48 S. Ct. 577.

The only case discovered which gave any indication that Certificate holders might be Creditors was *In Re Hotel Gibson Co.* 11 F. Supp. 30, 33 (D.C Ohio 1935). In that case, the Certificate holders had an interest in a trust which was the owner of land leased to the Hotel Gibson Co. The Hotel Gibson Co. was a Bankrupt and it was declared that the Certificate holders were Creditors of the Hotel corporation because the trust in which the Certificate holders had a beneficial interest was itself a Creditor of the Lessee Hotel Gibson Co.

The 10th Circuit Court in the *Bryan vs. Welsh case*, 72 F2d 618 at page 620, annotation 2, calls attention to the fact that ". . . it seems to be the well settled rule that Certificate holders in common law trust stand in their relation to the trust as stockholders in a corporation. They are not Creditors of the Trust. They are equitable owners of the Trust property. Fletcher, Cyclopedia Corporations (perm. Ed.) Vol. 16, § 8241; *Goodhue vs. State Street Trust Co.*", supra.

The Court's attention is further called to Fletcher, Cyclopedia Corporations, Vol. 16, § 8241, 8264 and 8267 and cases therein cited.

By examining Chapter X, Art III it is clear and compelling that filing a lawful Petition is a condition precedent absolutely to exercise by the Court of any Jurisdiction by approval of same, to-wit:

Sec 111: that only "where not inconsistent with the provisions of this Chapter . . . the Court in which a *Petition* is filed shall for purposes of this Chapter have . . . Jurisdiction . . ." (emphasis ours), and;

Sec 112: that "prior to approval of a *Petition*, the Jurisdiction, powers, and duties . . . shall be . . . (emphasis ours), and;

Sec 113: that "prior to approval of a *Petition*, the Judge may . . . grant . . ." (emphasis added), and;

See 114: that "upon the approval of a *Petition* the Jurisdiction, power, and duties of the Court *and of its officers* . . . shall be . . . (emphasis added), and;

Sec 115: that "upon the approval of a *Petition*, the Court shall have . . . in addition to jurisdiction . . . powers . . . (emphasis added), and;

Sec 116: that "upon the approval of a *Petition*, the Judge may, . . . in addition . . . (1) permit . . . etc." (emphasis added), and,

Sec 149: only "An Order, which has become final, approving a *Petition* filed under this Chapter shall be a conclusive determination of the jurisdiction of the Court." (emphasis ours)

Thus in the absence of a *"Petition"* the Court has no Jurisdiction to approve what doesn't exist as a matter of law, but it does have power to dismiss.

Sec 106(9) provides:

"*'Petition' shall mean* a *Petition filed* under this act *by a Debtor, Creditors, or indenture Trustee* proposing that a plan of reorganization be effected." (emphasis added)

Sec 106(4) provides:

"'Creditor' *shall mean* the holder of any *claim*." (emphasis ours)

Sec 106(1) provides:

"'Claims' *shall include all claims* of whatever character against a Debtor or its property, *except stock* . . . ."

Sec 106(12) provides

"'Stock' *shall include* membership, *shares*, and *similar interests in a Debtor, certificates, and other evidences of such membership, shares* or interests, and voting trust certificates." (emphasis added)

Thus it is quite clear that Petitioners in reorganization are Stockholders as a matter of law – not Creditors, and are specifically excluded by statutory definition from the classes recognized who may file a "Petition"; that their claimed Petitions are nullities and there being no "Petitions" filed and pending on April 26, 1968, the Amended Answers not being capable of correcting this defect as a matter of law, the Order which purports to approve said alleged "Petitions" is a nullity because this Court has no power to make a nullity into something which the Act (U S Statutes) says specifically it is not.

No compendium of case law, if it exists, can cure the basic defect so clearly recognizable from applying the pertinent statutory definitions, in plain, straightforward, and unmistakable language. This should be dispositive of these proceedings because it is quite clear that the requirements of *Sec 126* are not met, nor can they be met by Amendment.

The test of whether a Certificate owner becomes a "Creditor" can not be laid down with exactness. Counsel for the trustee and debtor trusts have relied heavily on *Selected Investments Corp vs. Duncan* 260 F(2) 918, (10 CA 1958). We agree that Certificate holders may under some circumstances acquire the status of "Creditor", and the frust " debtor". However, an examination of that reported case at page 921 demonstrates that the proof herein in no way approaches and misses absolutely, the tests and criteria established therein.

The test of "Creditor" as applied herein nullifies the language and intent of Chapter X legislation. If the Supreme Court permits this encroachment of the law to stand, it will do harm to all residents of the United States in general, and Indiana in particular.

VIII

CONCLUSION

For these reasons; a Writ of Certiorari should issue to review the Judgment and Opinion of the Seventh Circuit Court of Appeals and of the United States District Court for the Southern District of Indiana, Indianapolis Division.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Wednesday, January 14, 1970

Before

Hon. F. Ryan Duffy, Senior Circuit Judge
Hon. Roger J. Kiley, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

In the Matter of AMERICAN NATIONAL TRUST AND REPUBLIC NATIONAL TRUST, Debtors (Appellees). No. 17641, 17642, 17643	vs.	Appeals from the United States District Court for the Southern District of Indiana, Indianapolis Division
NEVA M. SHANKLIN, etc., Appellant		

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the orders of the said District Court approving the petitions for reorganization under Chapter X, denying the motions to vacate and stay the collateral attack on debtors' consent to reorganization, be, and the same are hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

In the
United States Court of Appeals
For the Seventh Circuit

SEPTEMBER TERM AND SESSION 1969

Nos. 17641, 17642, 17643

In the Matter of AMERICAN NATIONAL TRUST and REPUBLIC NATIONAL TRUST,
Debtors (Appellees),
v.
NEVA M. SHANKLIN, etc.,
Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

January 14, 1970

Before DUFFY, *Senior Circuit Judge*, KILEY and CUMMINGS, *Circuit Judges*.

DUFFY, *Senior Circuit Judge*. American National Trust and Republic National Trust are real estate trusts which have been in operation in the State of Indiana. Their principal offices were in Indianapolis, Indiana. These two trusts had common trustees and shared the same offices.

Appellant, Neva M. Shanklin, is the owner of certificates of beneficial interest in both the American National Trust and the Republic National Trust, having invested therein the sum of $30,600.

Involuntary petitions for reorganization under Chapter X of the Bankruptcy Act were filed on February 13 and February 26, 1968, against the American National Trust and the Republic National Trust, respectively. A receiver was appointed.

The debtors each filed an answer opposing the approval of the petitions. On April 4, 1968, Shanklin filed a motion to intervene and moved to dismiss the petitions and vacate the order appointing a receiver. A hearing on the approval of each Chapter X petition and on the motions of Neva Shanklin was set for April 26, 1968.

On the morning of the day set for hearing (April 26), the alleged debtors each filed an amended answer consenting to the granting of the petitions, but denying that the petitioning "beneficial interest" holders were creditors. After a hearing at which Shanklin made no objections, the District Court approved the petitions and ordered the reorganization to proceed and appointed trustees.

Petitioners introduced evidence to the effect that in the sale of the certificates of beneficial interest, representations had been made to them that the certificates would be redeemed by the trusts at any time. The Court ordered the petitions for reorganization approved and appointed trustees. Another hearing, pursuant to 11 U.S.C. § 569 was set for June 28, 1968.

On October 22, 1968, Neva Shanklin filed a suit in the Howard Circuit Court in the State of Indiana against Frank L. Gregory and Paul D. Hinkle in their capacities as trustees for each of the two real estate trusts. This suit sought to have set aside the trustees' vote authorizing the trust consent to the granting of the petitions in reorganization under Chapter X.

The District Court entered an order staying the suit in the Howard Circuit Court, and on December 5, the appellant Shanklin filed a notice of appeal from the order staying such suit.

The Securities and Exchange Commission (S.E.C.) was a participant in the hearing before the District Court. The Commission agrees with and concurs in the arguments of the debtors and trustees with respect to three issues: 1) that the petitions for reorganization under Chapter X of the Bankruptcy Act were properly approved; 2) that the jurisdiction of the District Court has been conclusively determined by virtue of Section 149 of Chapter X (11 U.S.C. § 549), and 3) that the District Court

had jurisdiction to stay the collateral attack on the debtors' consent to the reorganization.

However, the Commission disagrees with debtors and trustees in the view that appellant has presented no question with respect to the allowances of compensation to various persons. On this point, the Commission argues that the determination by the District Court of allowances to various persons may be reviewed by this Court, but that such a review is not necessary at this time.

The attorneys for the trustees had also been attorneys for the receiver and prior thereto, had represented the petitioning creditors. The District Court made a total allowance of $31,500 as interim fees for the attorneys. The S.E.C. had recommended an allowance of $20,000. The District Court also allowed $24,000 to Bradshaw as receiver-trustee fees. The S.E.C. had recommended $15,000. The District Court also made allowance of $31,495.50 as fees to two accountants.

The generous allowance of fees by the Court is shown by the fact that the allowance made by the Court exceeded the S.E.C. recommendations by the sum of $20,500. The District Court should and undoubtedly will take into consideration the generous amounts of the allowances heretofore made, at the time when the Court fixes the amounts of the final fees. We agree with the S.E.C. that there is no need, at this time, to review the order allowing compensation. Therefore, we make no determination as to our ability to do so under the circumstances of this case.

On this appeal, Shanklin relies principally on her claim that the holders of beneficial interests of the trusts were not creditors and, therefore, had no standing to sign petitions for relief under Chapter X, and that it follows the District Court had no jurisdiction.

Any such objection should have been presented at the April 26th hearing at which Shanklin was present, or at the June 28th hearing at which the petitions were finally approved and trustees appointed. Pursuant to 11 U.S.C. § 537, Shanklin could have objected then but she did not until December 16, 1968. In the case of *In re Hudson & Manhattan Railroad Company* v. *Stichman*, 229 F.2d 616,

620 (2 Cir., 1956), the Court indicated that when objections are not timely or properly made, the Court's determination of jurisdiction is final. They cited, as we do in the instant case, 11 U.S.C. § 549 — "An order which has become final, approving a petition filed under this chapter [Chapter X] shall be a conclusive determination of the jurisdiction of the court." We hold that the order of the District Court affirming the petitions asking for relief under Chapter X and appointing receivers became final.

The next issue raised by appellant is that the District Court had no right or authority to enjoin the Howard Indiana Circuit Court. We disagree! In *In re Muntz TV, Inc.*, 229 F.2d 314, 316 (7 Cir., 1956), we held "Under Section 116 of the Bankruptcy Act, Title 11 U.S.C.A. §516, the bankruptcy court may enjoin the commencement or continuation of any suit against the debtor and restrain all persons from attempting to enforce a lien upon its property . . . This is because, under the Constitution, a federal court's jurisdiction in bankruptcy is paramount and exclusive . . . Consequently, a bankruptcy court may properly stay any court proceeding which interferes with its exclusive jurisdiction, or violates its express orders. . . ."

The orders of the District Court approving the petitions for reorganization under Chapter X, denying the motions to vacate and stay the collateral attack on debtors' consent to reorganization, should be and are

AFFIRMED.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

EXCERPTS FROM CLAIMED "PETITION" FILED AGAINST AMERICAN NATIONAL TRUST

[32] * * * have been subject to a suit for appointment of a Receiver as set out above. The forced liquidation of the assets of said debtor would result in the sacrifice of those assets, to the great detriment of its creditors. The interest of said debtor and its creditors will be best preserved by the continuation of its business as a going concern under a plan of reorganization which can be accomplished under the provisions of Chapter X of said Act. The specific facts showing why adequate relief cannot be obtained under Chapter XI of said act are as follows: The capital structure of said debtor must be revised; and the secured indebtedness must be adjusted and interest and amortization payments thereon reduced and extended.

7. Your Petitioners desire that a plan of reorganization be effected for said debtor under and pursuant to Chapter X of said Act.

8. The indebtedness of said debtor, liquidated as to amount and not contingent as to liability is over One Million Dollars ($1,000,000.00).

9. No other petition by or against said debtor is pending under Chapter X of said Act nor is any other bankruptcy proceeding initiated by a petition by or against said debtor now pending.

10. Your Petitioners are creditors of said debtor and have claims against it, liquidated as to amount and not contingent as to liability, amounting in the aggregate to over Five Thousand Dollars ($5,000.00), the nature and amount of your petitioners' claims are as follows:

(a) The claim of Petitioner Frank V. Bezi for the sum of Three Thousand Five Hundred and Sixty Dollars ($3,560.00). [33] The said Petitioner is the owner of Trust Certificates totaling Three Hundred Fifty Six (356) shares of beneficial interest.

(b): The claim of Petitioners John Richards or Edith Richards, by the First National Bank of Wabash, Indiana for the sum of Two Thousand Dollars ($2,000.00). The said petitioners are the owners of Trust Certificates totaling Two Hundred (200) shares of beneficial interest.

(c) The claim of Petitioner, Ruth Q. Myers, Trustee for Mary Ruth Vicker, a minor, for the sum of Seven Thousand Four Hundred Ten Dollars ($7,410.00). The said petition is the owner of Trust Certificates for Seven Hundred Forty-One (741) shares of beneficial interest.

11. That on or about January 2, 1968, within four (4) months of the filing of this petition debtor suffered or permitted while insolvent, the State of Indiana, a creditor, to issue a Gross Income Tax Warrant which became on said date through legal proceeding a lien on all of the property of the debtor and that said lien was not vacated or discharged within thirty (30) days thereof and to date remains as a lien.

Within Four (4) months next preceding the filing of this petition the debtor committed an act of bankruptcy, in that on divers date while insolvent, and while having more than one creditor, it transferred or suffered the transfer of certain of its property and money to divers creditors in payment of antecedent indebtedness, the effect of which transfers was to enable said creditors to obtain a larger percentage of their claims than some other creditors of Debtor of the same class.

12. To the best of your Petitioners' knowledge, information and belief, within Six (6) years next preceding the filing of this petition, said debtor has not been known * * *

* * *

EXCERPTS FROM CLAIMED "PETITION" FILED AGAINST REPUBLIC NATIONAL TRUST

[41] * * * successors have been unable to obtain additional financing and have been subject to a suit for appointment of a Receiver as set out above. The forced liquidation of the assets of said debtor would result in the sacrifice of those assets, to the great detriment of its creditors. The interest of said debtor and its creditors will be best preserved by the continuation of its business as a going concern under a plan of reorganization which can be accomplished under the provisions of Chapter X of said Act. The specific facts showing why adequate relief cannot be obtained under Chapter XI of said act are as follows: The capital structure of said debtor must be revised; and the secured indebtedness must be adjusted and interest and amortization payments thereon reduced and extended.

7. Your Petitioners desire that a plan of reorganization be effected for said debtor under and pursuant to Chapter X of said Act.

8. The indebtedness of said debtor, liquidated as to amount and not contingent as to liability is over One Million Dollars ($1,000,000.00).

9. No other petition by or against said debtor is pending under Chapter X of said Act nor is any other bankruptcy proceeding initiated by a petition by or against said debtor now pending.

10. Your Petitioners are creditors of said debtor and have claims against it, liquidated as to amount and not contingent as to liability, amounting in the aggregate to over Five Thousand Dollars ($5,000.00), the nature and amount of your petitioners' claims are as follows:

[42] (a) The claim of Petitioner Robert D. McKillip for the sum of Two Thousand One Hundred and Thirty Dollars ($2,130.00). The said Petitioner is the owner of Trust Certificates totaling Two Hundred Thirteen (213) shares of beneficial interest.

(b) The claim of Petitioner James D. McKillip for the sum of Two Thousand One Hundred and Thirty Dollars ($2,130.00). The said Petitioner is the owner of Trust Certificates totaling Two Hundred Thirteen (213) shares of beneficial interest.

(c) The claim of Petitioner Roy Dean or Vernice Dean, for the sum of Two Thousand Dollars ($2,000.00). The said Petitioners are the owners of Two Hundred (200) shares of beneficial interest.

11. A proceeding to foreclose a mortgage and have a Receiver appointed against a primary asset of the debtor is pending in the Superior Court of Marion County, Room No. 1, and hearing was set for 1:00 P.M. on February 6, 1968, entitled The Equitable Life Assurance Society of the United States vs. Republic National Trust, American National Trust and Indiana Department of State Revenue. In addition, all or substantially all of the property of debtor is the subject of mortgage foreclosures and requests for the appointment of receivers as set out above.

Within four (4) months next preceding the filing of this petition the debtor committed an act of bankrupt, in that on divers date while insolvent, and while having more than one creditor, it transferred or suffered the transfer of certain of its property and money to divers creditors in payment of antecedent indebtedness, the effect of which transfers was to enable said creditors to obtain a larger percentage of their claims than some other creditors of Debtor of the same class.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN THE MATTER OF:
AMERICAN NATIONAL TRUST,
An Indiana Corporation,
No. IP 68-B-447

IN THE MATTER OF:
REPUBLIC NATIONAL TRUST,
An Indiana Corporation,
No. IP 68-B-609

4/26/68

ORDER APPROVING PETITIONS

At Indianapolis, in said district, on the 26th day of April, 1968.

This cause having come on to be heard on the petitions filed herein against American National Trust on February 13, 1968, and against Republic National Trust on February 26, 1968, praying that proceedings be had for each of said Debtors under Chapter X of the Act of Congress relating to bankruptcy, and each of said alleged Debtors having filed their Amended Answers,

NOW upon said petitions and amended answers, proceedings had before me at said hearing and evidence presented and due deliberation having been had thereon; the

COURT DOES FIND:

1. That the indebtedness of both American National Trust and Republic National Trust, the above named debtors, liquidated as to amount and not contingent as to liability, is in excess of Two Hundred Fifty Thousand Dollars ($250,000); and the

COURT IS SATISFIED AND DOES FIND:

2. That each of the said petitions filed herein against American National Trust on February 13, 1968, and against Republic National Trust on February 26, 1968, comply with the requirements of Chapter X of said Act; and it is

ORDERED ADJUDGED AND DECREED

3. That said petitions be, and they hereby are, approved

4. The court takes under advisement the appointment of a trustee.

James E. Noland, Judge

[April 26 1968]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN THE MATTERS OF
AMERICAN NATIONAL TRUST
REPUBLIC NATIONAL TRUST

Debtors

No. IP 68-B-442
No. IP 68-B-908

ORDER GRANTING MOTION TO STRIKE PLEADINGS

Comes now, John I. Bradshaw, Jr., Trustee in Reorganization and having filed his Motion to Strike Pleadings which motion is in the words and figures, to-wit: (Here)

And the Court being duly advised in the premises and having carefully considered said motion on the basis of the record in the above proceedings now finds that:

1. The Petitioner Neva M. Shanklin appeared in open Court by counsel and agreed that her original petition to intervene should be treated as a Motion to Appear and that the other allegations of her petition were dismissed on April 26, 1968.

2. The Petitioner Neva M. Shanklin did not appeal said ruling on April 26, 1968.

3. That the Petitioner Neva M. Shanklin did not make any objections either written or oral prior to or at the Section 101 hearing in this matter heard on June 28, 1968 for which she had proper statutory notice.

4. The Petitioner Neva M. Shanklin did not file any notice of appeal either timely or otherwise in these proceedings based upon the Court's ruling approving the petition herein on April 26, 1968 or confirming the Trustee on June 28, 1968.

5. The Court has jurisdiction to proceed with the within reorganization and that said jurisdiction is no longer amenable to a direct or collateral attack.

On the basis of the above findings the Court now finds that said Motion should be granted and it is therefore

ORDERED, that the Petition to Vacate and Set Aside Order Approving Petitions Entered April 26, 1968; To Dismiss Proceedings and Other Equitable Relief filed by Neva M. Shanklin, be stricken in toto on the grounds that said petition is without standing and that the allegations set out therein are redundant and immaterial and the issues raised have been previously determined by this Court without objection or appeal having been timely filed.

DATED, this 30th day of Dec., 1968.

/s/ James E. Noland
Judge, United States District Court,
Southern District of Indiana

[Caption Omitted in Printing]

ENTRY DISMISSING ANSWER DENYING FURTHER EXTENSION OF TIME FOR FILING RECORD AND DOCKETING APPEAL AND ENTRY DISMISSING THE APPEAL OF NEVA M. SHANKLIN

This matter having come before the Court upon the Appellant's Motion to Extend Time for Filing Record and Docketing Appeal and upon the Appellee's Answer in Opposition to Appellant's said motion, and the Court having been advised in the premises and having received the affi-

1. Appellant has failed to comply with the provisions of Rule 10(b) in the following particulars:

a. Within ten (10) days of filing a notice of appeal, Appellant failed to order from the Reporter a transcript of the proceedings not already on file.

b. Appellant failed within ten (10) days to file and serve on Appellee a description of the parts of the transcript which Appellant intended to include in the record.

c. Appellant failed within ten (10) days to file and serve on the Appellee a statement of the issues intended to be presented on appeal.

2. Appellant has failed to take the action necessary to enable the Clerk to assemble and transmit the record herein within forty (40) days of the filing of notices of appeal herein.

3. Appellant has failed to show cause why the Court should extend the time for transmitting the record herein.

And the Court having further extended said time to March 14, 1969, to fully consider this matter, the Court now, therefore, makes the following order:

1. IT IS ORDERED that Appellant's Motion to Extend Time for Filing Record and Docketing Appeal from the notices of appeal filed on December 5, 1968 and January 27, 1969, be, and it hereby is, DENIED for the reasons stated, and

2. IT IS FURTHER ORDERED that said appeal is hereby DISMISSED.

DATED this 14th day of March, 1969.

/s/ James E. Noland,
U.S. District Judge

CHAPTER X

Corporate Reorganizations

(United States Code, Title 11, Chap. 10, Secs. 501-676.)

ARTICLE II—DEFINITIONS.

(11 U.S.C. §§ 506-507.)

SEC. 106. For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against a debtor or its property, except stock, whether or not such claims are provable under section 63 of this Act and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(2) "commission" shall mean any commission or public authority created by any law of the United States or of any State, having regulatory jurisdiction over a public-utility corporation;

(3) "corporation" shall mean a corporation, as defined in this Act, which could be adjudged a bankrupt under this Act, and any railroad corporation excepting a railroad corporation authorized to file a petition under section 77 of this Act;

(4) "creditor" shall mean the holder of any claim;

(5) "debtor" shall mean a corporation by or against which a petition has been filed under this chapter;

(6) "debts" shall include all claims;

(7) "executory contracts" shall include unexpired leases of real property;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting-trust certificates, constituting claims against a debtor or claims secured by a lien upon any of its property;

(9) "petition" shall mean a petition filed under this chapter by a debtor, creditors, or indenture trustee proposing that a plan of reorganization be effected;

(10) "plan" shall mean a plan of reorganization proposed in a proceeding under this chapter;

(11) "securities" shall include notes, bonds, and other evidences of indebtedness, either secured or unsecured, and stock;

(12) "stock" shall include membership, shares, and similar interests in a debtor, certificates and other evidences of such membership, shares or interests, and voting-trust certificates;

(13) "subsidiary" shall mean a corporation substantially all of whose properties are operated under lease or operating agreement, or the majority of whose stock having power to vote for the election of directors, trustees, or other similar controlling bodies is owned, directly or indirectly, through an intervening corporation or other medium, by another parent corporation, a petition by or against which has been approved.

SEC. 107. Creditors or stockholders or any class thereof shall be deemed to be "affected" by a plan only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determined whether any creditor or stockholder or class is so affected.

ARTICLE III—JURISDICTION AND POWERS OF COURT.

(11 U.S.C. §§ 511-521.)

SEC. 111. Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

SEC. 112. Prior to the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers,

where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication.

SEC. 113. Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor.

SEC. 114. Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication.

SEC. 115. Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature.

SEC. 116. Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court—

(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash,

property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable;

(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; and

(4) in addition to the relief provided by section 11 of this Act, enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor.

(5) Notwithstanding any other provisions of chapter X, the title of any owner, whether as trustee or otherwise, to aircraft, aircraft engines, propellers, appliances, and spare parts (as any of such are defined in the Civil Aeronautics Act of 1938, as now in effect or hereafter amended) leased, subleased, or conditionally sold to any air carrier which is operating pursuant to a certificate of convenience and necessity issued by the Civil Aeronautics Board, and any right of such owner or of any other lessor to such air carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of chapter X if the terms of such lease or conditional sale so provide.

* * *

ARTICLE IV—PETITION

(11 U.S.C. §§ 526-533.)

SEC. 126. A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent

as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter.

* * *

ARTICLE V—ANSWER

(11 U.S.C. §§ 536-537.)

SEC. 137. Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor.

ARTICLE VI—APPROVAL OR DISMISSAL OF PETITION

(11 U.S.C. §§ 541-549.)

SEC. 144. If an answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied.

SEC. 145. If any issue raised in an answer filed under section 136 or 137 of this Act has, after hearing upon notice to the debtor, creditors, indenture trustees, and stockholders entitled to controvert the allegations of the petition, already been tried and finally determined under the provisions of section 143 or 144 of this Act, such final determination shall be conclusive for all purposes under this chapter.

SEC. 149. An order which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court.

ARTICLE VII PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

(11 U.S.C. §§ 556-580.)

SEC. 206. The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. The judge may, for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees.

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IN THE

Supreme Court of The United States

NO. 1690

NEVA M. SHANKLIN, etc.,

Petitioner,

v.

AMERICAN NATIONAL TRUST and REPUBLIC NATIONAL TRUST,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CITATIONS TO OPINIONS BELOW

The opinion of the United States Courts of Appeal for the Seventh Circuit is now reported in 420 F.2d 1117.

QUESTIONS PRESENTED

Respondents do not agree with the petitioner's statement of the questions presented. Section 149 of Chapter X of the Acts of Congress relating to Bankruptcy (11 USC 549) provides:

> "An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court."

The sole question presented is whether this section precludes an attack on the District Court's jurisdiction under Chapter X proceedings when petitioner:

1. Appeared by counsel at the hearing in the District Court on the question of whether the petition should be approved, and in response to a question of the court, advised that she had no objection to the approval of the petition; and

2. Did not file an answer contravening the petition, pursuant to and within the time allowed by section 137 of Chapter X (11 USC 537)

Petitioner's only attack below was on the jurisdiction of the District Court, and petitioner raised no questions or issues relating to the necessity or the desirability of continuing the Chapter X proceedings.

STATEMENT OF THE CASE

Petitioner flagrantly misrepresented the proceedings in the District Court. She was afforded two opportunities to object to the approval of the petitions in reorganization. At the first, her counsel stated that there was no objection. Although she had notice of the second hearing, she did not appear or file any pleadings objecting to the proceedings.

On February 13, (R. p. 29) and February 26, 1968 (R. p. 38), petitions for reorganization under Chapter X of the Acts of Congress relating to bankruptcy were filed in the District Court for the Southern District of Indiana against American National Trust and Republic National Trust respectively. The alleged debtors were real estate trusts with their principal offices in Indianapolis, Indiana. The two trusts had common trustees and shared the

same offices (R. p. 67). Pending a hearing on these petitions, a receiver was appointed (R. p. 49).

The debtors each filed answers and opposed the approval of the petitions (R. pp. 47, 55). Thereafter, on April 4, 1968, the appellant, Neva Shanklin, filed her motion to intervene and, at the same time, tendered her "Motion to Dismiss Petition and to Vacate and Set Aside Order Appointing Receiver and Order Adjudicating American National Trust and Republic National Trust, Bankrupts" (R. pp. 57, 59). The hearing on the approval of each petition and the motion of the appellant, Neva Shanklin, was set for hearing on April 26, 1968.

On the morning of the hearing, the alleged debtors asked for leave to file amended answers, consenting to the granting of the petitions under Chapter X and such leave was granted by the Court (R. p. 61). The Amended Answers consented to the granting of the petition in reorganization (Resp. App. p. A-1). The petitioning creditors introduced evidence to the effect that in the sale of the certificates of beneficial interest, representations were made that the certificates would be redeemed by the trust at any time (Tr. of Evidence, pp. 18-19). Following the presentation of petitioning creditors' evidence, the following exchange took place between counsel for Neva Shanklin, (Mr. Dowling), counsel for the debtors, (Mr. Lobley), and the Court:

> "THE COURT: I would inquire at this time: Are there any persons present who have objection to make to the petition for reorganization under Chapter 10?
>
> MR. DOWLING: Your Honor, I don't have any objection, I just have a question which probably should be put to counsel for the Trusts. Looking at their answer and in particular the denial that the petitioners are creditors, does the answer and their position

mean, and their consent to the reorganization petition, does that mean they consent and join in and request the reorganization as if the Trusts had originally filed the petition for reorganization? If they say, 'Yes, it is the same thing,' then my position is moot.

MR. LOBLEY: Our position is that we consent to the reorganization and feel that it should be taken and proceeded with in accordance with the petition. We do not at this time though, however, on the information available to us, admit that the certificate holders are creditors as such. For that reason, we deny that particular paragraph. However, we do consent to the proceedings in spite of the fact—and, I suppose, while we are not actually voluntarily initiating the proceedings, the net effect is the same by virtue of the consent.

MR. DOWLING: Thank you.

THE COURT: The Court then, Mr. Dowling, would consider your motion to intervene as a motion to appear, and your motion to appear in this proceeding is granted on behalf of the shareholder Neva Shanklin.

MR. DOWLING: Right."
(Tr. of Evidence, pp. 37-38).

The Court then ordered the petitions approved and a trustee appointed (R. p. 68). The order approving the petitions and appointing the trustees set June 28, 1968 at 9:30 a.m., as the time for the hearing pursuant to § 161 of Chapter X (11 U.S.C. § 569), (Resp. App. p. A-2). All creditors and certificate holders were notified of such hearing and each could have, pursuant to § 137 (11 U.S.C. § 537), filed an answer contravening each of the petitions. No contravening answers were filed nor were any objections made to the retention of the trustees.

On December 23, 1968, appellant, Neva Shanklin, filed her "Petition to Vacate and Set Aside Order Approving

Petitions Entered April 26, 1968; to Dismiss Proceedings; and Other Equitable Relief." This petition questioned the right of certificate holders of a real estate trust to petition for a reorganization and questioned the trustees of each of the trusts' good faith in consenting to the granting of the petition (R. p. 86). On December 27, 1968, the trustee filed his Motion to Strike the petition filed by Neva Shanklin (R. p. 101) and on December 30, 1968, the Court sustained the motion on the grounds that Neva Shanklin had had the opportunity to raise these questions at the hearing on the granting of the petitions on April 26, 1968 or at the hearing on June 28, 1968 and did not do so. The court found that in light of her failure to do so, she could no longer attack the jurisdiction of the District Court over the proceedings (R. p. 107, Pet. App. p. A11)

ARGUMENT

The Question Sought to be Presented is not One of Significance

Petitioner attacks the jurisdiction of the United States District Court for the Southern District of Indiana under the Chapter X reorganization proceedings of two real estate trusts which maintain their offices in the Southern District of Indiana. Her attack on the jurisdiction of the District Court is based solely upon the capacity of the persons filing the petition, as creditors, to file such petition. The petitioner does not question the fact that the debtors had their principle place of business in the Southern District of Indiana nor does she contest the fact that the only Court which could have jurisdiction over Chapter X reorganization proceedings of the debtors was the United States District Court for the Southern District of Indiana. Petitioner does not raise any question of procedural due process with respect to notice to her or to the debtor corporations. Therefore, the United States District Court had jurisdiction of the general subject matter of the proceedings and all persons were properly notified of the initiation and pendance of the proceedings. Therefore, the propriety of the approval of the petition for reorganization was a question of fact to be determined by the District Court, which had jurisdiction over the person of the debtors and over the subject matter of the proceedings.

Petitioner did not, in the lower court, nor does she here, seek to raise any question as to whether, on the merits, the Chapter X proceedings should be continued. Since the United States District Court for the Southern District of Indiana had jurisdiction over the general sub-

ject matter and over the person of the debtors, the question petitioner seeks to present does not show any departure from the accepted and usual course of judicial proceedings.

Petitioner Failed to Properly Raise the Question She Seeks to Present

§ 149 of the Acts of Congress (11 U.S.C. § 549) relating to bankruptcy provides:

> "An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court."

Senate Report 1916 on H.B. 8046, 75th Cong., 3d Ses. (1938) provides at page 27 that this section

> "is designed to foreclose all direct and collateral attack upon jurisdiction or venue."

If applied to the debtors themselves, the filing of the amended answers consenting to the reorganization precluded each of the debtor trusts from further contesting the Court's jurisdiction. With respect to petitioner, Neva Shanklin, any creditor or shareholder has the right to file an answer contesting the petition for reorganization whether such petition be filed voluntarily by the debtor or filed by creditors. This right is set forth in § 137 (11 U.S.C. § 537) which reads:

> "Prior to the first date set for the hearing provided in Section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor."

and in § 144 (11 USC § 544) which reads:

> "If an answer filed by any creditor, indenture trustee, or stockholder shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied."

In this case the date set for hearing, pursuant to § 161 (11 USC § 569), was June 28, 1968. At that time, neither Neva Shanklin nor any creditor or other certificate holder filed a contravening answer pursuant to § 137 (11 USC § 537).

Thus, in this case the time for Neva Shanklin to contest the jurisdiction of the District Court passed when, at the latest, she did not file a contravening answer under § 137 (11 USC § 537) at or prior to the § 161 (11 USC § 569) hearing on June 28, 1968. She may well have been precluded from contesting the District Court's jurisdiction by virtue of her appearance at the hearing on the approval of the petitions on April 26, 1968 when, in response to a question by the Court, she advised that she had no objection to the approval of the petitions. But in any event, any attack on the District Court's jurisdiction by the appellant, Neva Shanklin, or any other person was concluded and the Court's jurisdiction conclusively established when no contravening answer under § 137 (11 U.S.C. § 537) was filed by June 28, 1968.

The District Court Properly Approved the Petition

The petitions for reorganization under Chapter X in each of these proceedings were filed by certificate holders of the debtor real estate investment trusts. Whether or not such certificate holders have the standing to file such petitions depends upon the facts and circumstances surrounding each case. If the facts show that the certificate holders are in the position of shareholders, they may not file such petitions unless they are also creditors. *Bryan v. Welsh*, 72 F.2d 618 (10th Cir., 1934).

On the other hand, if because of right of redemption and other surrounding facts and circumstances, the certificate holders have the characteristics of creditors, they may file the Chapter X petitions. *Selected Investments Corp. v. Duncan*, 260 F.2d 918 (10th Cir., 1958).

In the present case, the petitions against American National Trust and Republic National Trust were filed by three (3) certificate holders of each trust. While initially opposing the petitions, the alleged debtor trusts each, on the day of the hearing on the petitions, filed amended answers. These amended answers admitted all of the allegations of the petitions except that the petitioners were creditors. The amended answers each affirmatively consented to the granting of the petitions for reorganization because the trustees of each of the trusts believed that an effective reorganization of the trusts could not be made without Court assistance. Following the filing of such answers, evidence was introduced showing that representations had been made to some certificate holders at the time of the sale to them to the effect that the trusts would redeem the certificates for cash at any time. Following this hearing, the Court approved the petitions.

The amended answers of the debtor trusts had the effect of making the petitions voluntary petitions by each of the trusts. A similar matter was presented under Chapter X's predecessor, § 77(b) of the Bankruptcy Act, in *In re Palisades-on-the-Desplaines*, 89 F.2d 214 (7th Cir., 1937). In that case, creditors had filed a petition for reorganization. The debtor answered admitting jurisdiction, its inability to meet its debts, and assenting to the reorganization. The Court said at page 217:

> "The debtor's verified answer avers facts sufficient to authorize the approval of a voluntary petition, and the court was warranted in so treating it. Whether it considered it as such, or regarded the creditors' petition, aided by the answer, as sufficient, is immaterial. Both are permissible under the statute, as we construe it, and either would carry out its plain intention. It is urged, however, that the court did not specifically approve the answer. That part of the section which we have quoted does not require that the court specifically approve the answer, but that it did consider its allegations, and approve, and rely upon them is quite manifest from the recitals of the decree.
>
> (3) Certain authorities upon which appellant relies have been cited to the effect that jurisdiction can not be conferred by mere admission. As a general rule, that is true, but that rule applies to cases where jurisdiction is inherently lacking. Here, however, the District Court was the only one which could have jurisdiction of the subject matter, and only upon conditions which depended entirely upon allegations of fact. The only one lacking was furnished by the debtor's admission, which it had a right to make, and under such circumstances we think jurisdiction was thereby conferred."

This rule was applied to the status of the petitioning creditors in *In re Central Forging Co.*, 101 F.2d 736 (3d Cir., 1939) where the Court said at page 738:

> "Furthermore the debtor filed an answer admitting the allegations of the petition and joining in its prayers. This the debtor had a right to do even though a receiver was in possession of its property. In re C. Moench & Sons Co., 2 Cir., 130 F. 685; Struthers Furnace Co. v. Grant, 6 Cir., 30 F.2d 576. The effect of its answer was to convert the proceeding into a voluntary one and thus to remove from the case the question as to the petitioning creditors' status and as to the debtor's solvency."

This principle was again recognized in *In re Hudson & Manhattan Railroad Co.*, 229 F.2d 616 (2d Cir., 1956). Thus the answers of each of the alleged debtors consenting to the granting of the petitions removed from the creditors' petitions whatever infirmities may have existed, including any questions with regard to the status of the petitioning creditors. Moreover, the Court was justified, in light of the evidence in the record, to find that the petitioning certificate holders did in fact have standing as creditors.

CONCLUSION

The petitioner did not properly preserve in the lower court the jurisdiction question she now seeks to present to this court. Moreover, she raises at most the question of a technical defect in the petitions for reorganization and raises no question of the District Court's jurisdiction over the debtors or over the general subject matter of the proceedings. If she is dissatisfied with the proceedings on the merits she may still raise those questions, which she

has not yet done, in the District Court. Under these circumstances, petitioner has failed to show any departure from the accepted and usual course of judicial proceedings.

Respectfully submitted,

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Excerpts from Amended Answers filed by American National Trust and Republic National Trust A-1

Order Appointing Trustee A-1

APPENDIX

The Amended Answer of debtor American National Trust is as follows:

"Comes now the alleged debtor and for its amended answer to the Petition filed herein says:

1. It admits the material allegations of rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12.
2. It denies the material allegations of rhetorical paragraph 10.

Comes now the alleged debtor and based upon the foregoing answer to the Petition filed herein consents and acquiesces to the approval of the Petition for Reorganization and to the appointment of a Trustee herein."

The Amended Answer of debtor, Republic National Trust is as follows:

"Comes now the alleged debtor and for its amended answer to the Petition filed herein says:

1. It admits the material allegations of rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12.
2. It denies the material allegations of rhetorical paragraph 10.

Comes now the alleged debtor and based upon the foregoing answer to the Petition filed herein consents and acquiesces to the approval of the Petition for Reorganization and to the appointment of a Trustee herein."

ORDER APPOINTING TRUSTEE

Paragraph 13 of the Order Appointing Trustee is the following:

"13. That said Trustee be, and hereby is, directed to give notice of the hearing fixed in Paragraph Number 10, at least Thirty (30) days prior to the 28th day of June, 1968, by mailing such notice to the creditors and stockholders of said Debtors, as the same may appear upon the Debtors' records, or as may be otherwise known to the Trustee, to the Secretary of the Treasury, Washington, D.C., and by mailing Two (2) copies of such notice to the Securities and Exchange Commission by registered mail, first class, postage prepaid, addressed to Washington, D.C., and to Chicago, Illinois, or to such other place as the Securities and Exchange Commission shall designate by written notice filed in this proceeding, and served upon the parties to this proceeding, such notice to be in the following form:

NOTICE OF HEARING UNDER SECTION 161

To all creditors and stockholders and Other Parties in Interest:

NOTICE IS HEREBY GIVEN that on the 13th day of February, 1968, and the 26th day of February, 1968, Petitions were filed herein against American National Trust and Republic National Trust, respectively, praying that proceedings be had under Chapter X of the Act of Congress relating to bankruptcy with respect to subject Debtors and that Orders were entered approving said Petitions and approving JOHN I. BRADSHAW, JR. Trustee of said Debtors.

NOTICE IS FURTHER GIVEN that June 28, 1968, at 9:30 o'clock a.m., Room 289 Federal Building, Indianapolis, Indiana, has been fixed as the time and place for the hearing of objections to the retention in office of JOHN I. BRADSHAW, JR. as Trustee upon the ground that he is not qualified or not disinterested as provided in Section 156 of said Act.

NOTICE IS FURTHER GIVEN that October 1, 1968, has been fixed as the time within which the

Trustee shall petition the Court for a time to prepare and file a plan of reorganization or a report of its reasons why a plan cannot be effected.

NOTICE IS FURTHER GIVEN that creditors and stockholders of said Debtors may submit to JOHN I. BRADSHAW, JR., said Trustee, at his office, Chamber of Commerce Building, Indianapolis, Indiana, on or before the 1st day of September, 1968, suggestions for the formulation of a plan for the reorganization of said Debtors, or proposals in the form of plans for the reorganization of said Debtors."

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 258

NEVA M. SHANKLIN, PETITIONER.

v.

AMERICAN NATIONAL TRUST AND REPUBLIC NATIONAL TRUST

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION*

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A–1 to A–5) is reported at 420 F. 2d 1117. The district court rendered no opinion.

*The Securities and Exchange Commission is participating in the reorganization proceeding in the district court as a party pursuant to Section 208 of Chapter X of the Bankruptcy Act, 11 U.S.C. 608, and has taken positions in that court and in the court of appeals (Pet. App. A–3 to A–4) similar to the positions urged herein. As in *Protective Committee* v. *Anderson*, 390 U.S. 414, 420 n. 3, the Commission is "an unnamed respondent before this Court."

JURISDICTION

The judgment of the court of appeals was entered on January 14, 1970. On April 3, 1970, Mr. Justice Marshall extended the time for the filing of the petition for a writ of certiorari to June 13, 1970, and the petition was filed on that date.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 11 U.S.C. 47(c).

QUESTION PRESENTED

Whether orders approving petitions for reorganization under Chapter X of the Bankruptcy Act of two common law real estate trusts, filed by certificate holders of the trusts, and thereafter consented to by the trusts, became final within the meaning of Section 149 of the Bankruptcy Act when the times to answer the petitions and to appeal from the orders had expired, thus precluding a subsequent vacation of the orders in the reorganization proceeding or through collateral attack in a state court.

STATUTE INVOLVED

The pertinent provisions of Chapter X of the Bankruptcy Act[1a], in addition to those printed in the petition, are as follows:

Section 149:

> An order, which has become final, approving a petition filed under this chapter shall be a

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[1] The record, however, was not filed until June 15, 1970, so there is a question as to the timeliness of the petition. Stern and Gressman, *Supreme Court Practice* (4th ed.) p. 265.

[1a] In Title 11 of the United States Code, the numbering of the sections of the Bankruptcy Act comprising Chapter X is higher by 400 than in the Act itself—*e.g.*, Section 149 of that Act is Section 549 under Title 11. All references to section numbers in the text are to sections of the Bankruptcy Act.

conclusive determination of the jurisdiction of the court.

Section 136:

> Within ten days after the service of the subpena and of a copy of the petition, or within such further time as the court may for cause shown allow, an answer controverting the facts alleged in the petition may be filed by the debtor.

Section 143:

> If the answer of a debtor shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied.

STATEMENT

Petitioner, a holder of certificates of beneficial interest in two common law real estate investment trusts formed under the laws of Indiana, challenges two orders of the United States District Court for the Southern District of Indiana entered in consolidated reorganization proceedings for those trusts under Chapter X of the Bankruptcy Act, 11 U.S.C. 501, *et seq.*

In February 1968, petitions for reorganization were filed against American National Trust and Republic National Trust, respectively, by three holders of cer-

tificates of beneficial interest in each of the trusts (R. 29, 38). The debtors filed answers opposing the petitions (R. 47, 55). Before any hearing thereon, petitioner filed a "Motion to Dismiss Petition and to Vacate and Set Aside Order Appointing Receiver and Order Adjudicating American National Trust and Republic National Trust Bankrupts." That motion urged, *inter alia*, that the certificate holders of the trusts were not creditors entitled to file an involuntary Chapter X petition (R. 59).

On April 26, 1968, the district court held a hearing on the petitions for reorganization and on petitioner's motion. At the hearing the debtors asked for and were granted leave to file amended answers, consenting to the petitions for reorganization (R. 61, 63). The three petitioning certificate holders then introduced evidence of representations, made at the time of sale of certificates of the trusts, that such certificates would be redeemed at face value by the trusts at any time (Tr. 18–19).[2] Upon inquiry by the district judge as to whether any persons present objected to the petitions for reorganization, petitioner (through her counsel) stated that she had no objection because, if the amendments to the answers filed by the trusts meant that they consented to the reorganization petitions (as counsel for the trusts thereupon stated), her position was "moot" (Tr. 37–38). At the close of the hearing, the court approved the petitions for reorganization, appointed trustees, and scheduled for June 28, 1968, a further hearing, pursuant to Section 161

[2] "Tr." refers to the transcript of the proceeding before the district court on April 26, 1968.

of the Act, to consider any objections to the trustees' continuation in office (R. 65, 75). No answer was filed thereafter pursuant to Section 137, which authorizes answers prior to the date set for a Section 161 hearing "by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor * * *"; and no appeal was taken from the order of April 26, 1968.

On October 22, 1968, petitioner filed suit in an Indiana state court against the trustees of the trusts seeking to set aside the debtors' consent to the approval of the reorganization petitions (R. 78). On November 6, 1968, the district court, pursuant to Section 116(4), stayed the state court suit (R. 83). Mrs. Shanklin then filed in the district court a petition to vacate and set aside the order approving the reorganization petitions, which questioned the status of the petitioning certificate holders as creditors of the debtor trusts and the good faith of the trusts in consenting to the petition (R. 86). The district court dismissed the petition to vacate (Pet. App. A-11), and the court of appeals affirmed that order and the earlier order staying the state court suit (Pet. App. A-1).

ARGUMENT

1. Section 149 of the Bankruptcy Act provides that an order approving a Chapter X petition which has

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Section 161 of the Act has no relevance to the issue here involved except that under Section 137 "the first date set for the hearing provided in Section 161" is the deadline for the filing of these answers.

become final is "a conclusive determination of the jurisdiction of the court." In determining whether an order of approval has become final, it must be borne in mind that the statutory procedure governing approval of a Chapter X petition contemplates the possibility of more than one order approving a petition. Under Section 141, the judge may approve a voluntary petition immediately upon its filing; and under Sections 142 and 143, the judge may approve an involuntary petition (1) if the debtor has not filed an answer controverting any material allegations of the petition or (2) if such an answer has been filed but the judge determines the issues adversely to the debtor. After initial approval, Section 137 permits the filing of an answer by others;[4] and if such an answer is filed, the judge again has to determine under Section 144 whether the petition should be approved.

In the instant case, while the debtor filed an answer pursuant to Section 136, neither petitioner nor anyone else filed an answer pursuant to Section 137. Even assuming that petitioner's motion to dismiss could be deemed an answer pursuant to Section 137, it was in effect withdrawn by her concession that the amended answers and consents of the debtors rendered her position "moot" (p. 4, *supra*). The time to file an answer pursuant to Section 137 expired on

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[4] See 6 Collier, *Bankruptcy* ¶6.06, p. 1016 (14th ed., 1969 Revision): "For example, an involuntary petition may be subjected to contravening answers *seriatim* by the debtor, one or more creditors, one or more indenture trustees and one or more stockholders."

June 28, 1968, the date the court had set for a hearing under Section 161 of the Act, and accordingly no further approval pursuant to Section 144 of the Act was required. Under these circumstances, the only approval of the petition was that of April 26, 1968, which became final after the time to file an answer pursuant to Section 137 had expired and after the time to appeal from that order had expired. *In re Technical Marine Maintenance Co.*, 169 F. 2d 548, 553 (C.A. 3); *Country Life Apartments, Inc. v. Buckley*, 145 F. 2d 935, 938 (C.A. 2); *In re V-I-D*, 177 F. 2d 234, 236 (C.A. 7). As these cases hold, Section 149 precludes any subsequent attack on the order approving the petition.[5]

2. Once the debtor has consented to an involuntary petition for reorganization, there is no need to satisfy the additional requirements of an involuntary petition.[6] *In re Central Forging Co.*, 101 F. 2d 736 (C.A.

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[5] This, of course, includes a collateral attack, as petitioner attempted in an Indiana state court.

> Section 149 is designed to foreclose all direct or collateral attack upon jurisdiction or venue, once the period for appeal from an order approving a petition has expired. [S. Rep. 1916 on H.R. 8046, 75th Cong., 3d Sess. (1938), p. 27.]

Even before an order of approval has become final, the district judge has jurisdiction under Section 116(4) to "enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor."

[6] This was apparently recognized by petitioner in stating, after the trusts had filed their amended answers consenting to the reorganization, that her position had become "moot" (p. 4, *supra*). In any event, this statement, which in effect withdrew the objection in the district court, prevents that objection from

3); *In re Park Beach Hotel Bldg. Corp.*, 96 F. 2d 886, 891 (C.A. 7); *In re Palisades-on-the-Desplaines*, 89 F. 2d 214, 217 (C.A. 7). And see *In re Hudson & Manhattan R.R. Co.*, 229 F. 2d 616, 619 (C.A. 2); *Moore* v. *Linahan*, 117 F. 2d 140 (C.A. 2). Accordingly, the questions petitioner raises as to whether the certificate holders were creditors with claims "liquidated as to amount and not contingent as to liability"—a requirement of Section 126 for an involuntary petition—are not involved.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1970.

being considered on appeal. See *Clark Bros. Co.* v. *Portex Oil Co.*, 113 F. 2d 45 (C.A. 9); *In re Technical Marine Maintenance Co.*, *supra*, 169 F. 2d at 553.

APPENDIX

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

No. IP 68-B-447 and No. IP 68-B-609

IN THE MATTERS OF: AMERICAN NATIONAL TRUST AND REPUBLIC NATIONAL TRUST, DEBTORS.

In Proceedings for the Reorganization of a Corporation

ORDER STAYING SUIT IN HOWARD CIRCUIT COURT

This cause came before the Court upon the petition of the debtor to stay Cause Number 37538 in the Howard Circuit Court entitled Neva M. Shanklin, on behalf of herself and all other holders of shares of Beneficial Interest in the American National Trust and Republic National Trust of Indiana vs. Frank L. Gregory and Paul D. "Tony" Hinkle, as Trustees of the American National Trust and The Republic National Trust, and the Court being duly advised in the premises FINDS that said action is a collateral attack upon the proceedings pending in this court and is a suit against the trustees of the debtor in their capacities as Trustees and, as such, constitutes an interference with the proceedings in this court.

It Is Therefore Ordered that Cause Number 37538 in the Howard Circuit Court entitled Neva M. Shanklin, on behalf of herself and all other holders of shares of Beneficial Interest in the American National Trust and Republic National Trust of Indiana vs. Frank L. Gregory and Paul D. "Tony" Hinkle, as Trustees of the American National Trust and The Republic National Trust, be and it hereby is stayed and that no further proceedings be had thereon until further order of this court.

Entered this 6th day of November, 1968.

JAMES E. NOLAND,
Judge, United States District Court.

U.S. GOVERNMENT PRINTING OFFICE: 1970